



May 10, 2019

Via ECFS

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. §160(c) to Accelerate Investment in Broadband and Next-Generation Networks*
(WC Docket No. 18-141)

Dear Ms. Dortch:

On May 8, 2019, the undersigned, along with representatives from multiple USTelecom members (“USTelecom representatives”), met with staff of the Wireline Competition Bureau (“WCB”) in support of USTelecom’s Petition for Forbearance.¹ A list of the USTelecom representatives and WCB staff in attendance is attached.

During the meeting, the USTelecom representatives urged nationwide forbearance from Section 251(c)(3) unbundling requirements, as well as related mandates, and from Section 251(c)(4) ILEC-specific resale mandates. Consistent with the ex parte letter filed on May 6, 2019,² the USTelecom representatives suggested that if the Commission does not grant USTelecom’s remaining forbearance requests entirely, it should, at a minimum, at least forbear from enforcing:

1. Unbundling requirements for DS1 and DS3 loops in (a) census blocks featuring competition from a cable provider offering service at speeds of at least 25 Mbps downstream and 3 Mbps upstream or (b) counties that have already been deemed competitive by the Commission in the Broadband Data Services (“BDS”) proceeding;
2. Unbundling requirements for digital DS0 loops in census blocks featuring competition from a cable provider offering service at speeds of at least 25 Mbps downstream and 3 Mbps upstream;
3. Unbundling requirements for analog DS0 loops nationwide;
4. Unbundling requirements for transport where there is demonstrable evidence of competition; and
5. 251(c)(4) resale obligations nationwide.

¹ See generally Petition for Forbearance of USTelecom – The Broadband Association, WC Docket No. 18-141, at iv, 24-25 (filed May 4, 2018) (“Petition”).

² See Letter from Patrick Halley, Senior Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed May 6, 2019) (“May 6 Ex Parte Letter”).

This approach would recognize that, given extensive retail voice competition, there is no basis for continued unbundling of analog loops or resale, which are used by CLECs almost exclusively to provision voice services. It also would recognize that, where cable operators are providing robust broadband in competition with the ILEC, there is no basis for requiring the unbundling of DS1 or DS3 loops, or of digital DS0 loops, because retail customers have options for obtaining high-capacity services from at least two providers relying on distinct networks.

Further, for the reasons articulated in the May 6 Ex Parte Letter, we explained that if the Commission were to grant partial relief along the lines described above, doing so would be wholly within the scope of the Commission's legal authority and would not in any way conflict with the framework governing forbearance requests.³

With respect to suggestions that rural consumers would be harmed as a result of a grant of the Petition,⁴ USTelecom representatives argued that a failure to grant forbearance from unbundling rules for loops in census blocks served by a cable competitor would be inconsistent with the Commission's longstanding policy prohibiting the availability of universal service support in areas served by an unsubsidized competitor (*i.e.*, a cable company) based on Form 477 data. Since the adoption of the Connect America Fund ("CAF") in 2011,⁵ and in numerous CAF implementation orders since, the Commission consistently has taken the view that it need not subsidize competition in a census block if a cable company (or other unsubsidized competitor) is already providing service. A "core objective" of the Commission has been to "ensure that we do not provide support to overbuild unsubsidized competitors that are offering voice and broadband services meeting the Commission's requirements."⁶ The Commission thus has found that the presence of a single cable competitor is sufficient to justify a lack of government support in such areas. The same rationale and the same FCC Form 477 data militates against the continued imposition of unbundling and 251(c)(4) resale requirements in the same locations. If the public interest is not served by subsidizing competition in such areas on the back of ratepayers via the Universal Service Fund, then the public interest is also not served by subsidizing competition on the back of ILECs in the same rural areas subject to the same cable competition. ILECs should not be forced to subsidize their competitors if the government is not willing to do the same. Moreover, we reminded the Commission that the ILEC facilities in such areas will remain available to competitive carriers via alternative commercial arrangements. Should the Commission forbear from unbundling obligations for analog DS0 loops on a nationwide basis,

³ See May 6 Ex Parte Letter at Section II.

⁴ See, *e.g.*, Comments of INCOMPAS, WC Docket No. 18-141 *et al.*, at 6, 21, 24 (filed May 9, 2019); see also Press Release, INCOMPAS, AT&T Places Their Own Interests over our Nation's 5G Future (May 6, 2019), <https://www.incompas.org/content.asp?admin=Y&contentid=499> (issuing a statement from INCOMPAS CEO Chip Pickering).

⁵ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17728 ¶ 168 (2011)

⁶ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5969 ¶ 54 (2016); see also *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15674 ¶ 80 (2014) ("any area served by an unsubsidized facilities-based terrestrial competitor that offers 10/1 Mbps will be ineligible for support in the Phase II competitive bidding process").

USTelecom's members have committed to offering alternative commercial arrangements at those locations.⁷

We further explained that while USTelecom has articulated the need for more accurate Form 477 data in the universal service context as the Commission embarks on the next phase of the CAF, reliance on FCC Form 477 census block data is more than adequate for assessing the presence of and feasibility of competition for last-mile facilities without reliance on UNEs. The Commission expressly held as much in the *BDS Order*: "Form 477 broadband service availability data necessarily imply the presence of broadband-capable cable network facilities, which makes it an ideal dataset to ensure the competitive market test accounts for competition from cable operators."⁸ Importantly, cable-served census blocks are significantly smaller and denser than average. The mean area of a cable-served census block is 0.9 square miles and the median is 0.008 square miles.⁹ Thus, if a cable operator has deployed facilities in a census block, it is a highly reliable indicator that competitive facilities are generally available or deployable throughout the census block. In that case, there is no justification for maintaining network unbundling requirements.

Indeed, while the program has been updated over the years to improve its utility, when the Form 477 was created, one of the express purposes for the collection of voice and broadband service availability was to "help [the Commission] to achieve the complementary goal reflected in the 1996 Act of *reducing government regulation wherever possible*."¹⁰ More recently, the Commission reiterated the value of Form 477 by noting that "associations, scholars, and others will be able to use the information in their independent analyses of Commission policies, thereby aiding the Commission in crafting regulations that address specific market problems and *eliminating those regulations that have outlived their usefulness*."¹¹ The goal and utility of Form 477 data as a tool for competition analysis, particularly in small census blocks, remains alive and well today and the Commission has the data to support reduction of regulation here.

⁷ See, e.g., Letter from James P. Young, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, (filed Feb. 21, 2019).

⁸ *Business Data Services in an Internet Protocol Environment et al.*, Report and Order, 32 FCC Rcd 3459, 3507 ¶ 106 (2017).

⁹ Declaration of Glenn Woroch and Robert Calzaretta, WC Docket 18-141 (May 6, 2019), attached to May 6 Ex Parte Letter.

¹⁰ *Local Competition and Broadband Reporting*, Report and Order, 15 FCC Rcd 7717, 7720 ¶ 5 (2000) (emphasis added).

¹¹ *Modernizing the FCC Form 477 Data Program*, Report and Order, 28 FCC Rcd 9887, 9923 ¶ 82 (2013) (emphasis added).

Please direct any questions to the undersigned.

Sincerely,

/s/ Patrick R. Halley

Patrick R. Halley
Senior Vice President, Advocacy and
Regulatory Affairs
USTelecom—The Broadband Association

ATTACHMENT

WCB Attendees

- Kris Monteith
- Terri Natoli
- Edward Krachmer
- Eric Ralph
- Pamela Arluk
- Michele Berlove
- Gregory Capobianco
- Megan Capasso

USTelecom Attendees

- Patrick Halley, USTelecom
- Patrick Brogan, USTelecom
- AJ Burton, Frontier
- Jackie Flemming, AT&T
- Keith Krom, AT&T
- Chris Shenk, Sidley Austin LLP (on behalf of AT&T)
- Katharine Saunders, Verizon
- Fred Moacdieh, Verizon
- Jeff Lanning, CenturyLink
- Craig Brown, CenturyLink (via teleconference)
- Mike Skrivan, Consolidated (via teleconference)